



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on July 28, 1998

NOTICE OF ACTION TAKEN -- DOCKET OST 96-1397

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: DEUTSCHE BA LUFTFAHRTGESELLSCHAFT mbH Date Filed: March 20, 1998

Relief requested: Exemption from 49 USC section 41301 and Statement of Authorization under 14 CFR Part 212 to the extent necessary to permit Deutsche BA to continue, for a period of two years, to carry USAirways' code, under the two carriers' code-share arrangement, for operations wholly between points in Germany (carrying USAirways' traffic that originates and/or terminates in the United States).

If renewal, date and citation of last action: July 1, 1996; confirmed by Order 96-8-36.

Applicant representative: David T. Beddow and Patrick P. Rizzi, 202-383-5300

Responsive pleadings: On July 9, 1998, United Air Lines, Inc., filed an answer (together with a motion to file out of time */) urging the Department to defer on the application, pending final Department action on its complaint, filed on July 8, 1998, in Docket OST-98-4030, against the European Commission and National Implementing Authorities, under the International Fair Competition Practices Act of 1974, as amended (IATFPCA).

On July 14, 1998, Deutsche BA filed a reply to United's answer.

DISPOSITION

Action: Approved

Action date: July 28, 1998

Effective dates of authority granted: July 28, 1998, through July 28, 2000.

Basis for approval (bilateral agreement/reciprocity): The proposed operations are encompassed by the U.S.-Germany Air Transport Services Agreement, as amended. Further, based on the record in this case, we found that the public interest continues to warrant, to the extent necessary, waiver of our policy that a foreign carrier be substantially owned and effectively controlled by citizens of its homeland, as there appears to be nothing in the ownership and control of the carrier that would be inimical to U.S. aviation policy or interests. Finally, we determined that United's answer raises arguments more appropriately addressed within the context of its IATFPCA complaint in Docket OST-98-4030 (see Order 98-7-16) and that, against this background, the public interest did not call for withholding action on the present application.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

☒ Standard exemption conditions

☐ Foreign air carrier permit conditions

Special conditions/Partial grant/Denial basis/Remarks: These code-share operations must comply with 14 CFR 399.88 of the Department's regulations, and any amendments to the Department's regulations concerning code-share arrangements that may be adopted, and the further conditions that this foreign air transportation be sold in the name of the carrier holding out the service in computer reservation systems and elsewhere, that the carrier selling such transportation accept all obligations established in its contract of carriage with the passenger (that is, the ticket), and

*/ We granted the motion.

that the passenger liability of the operating carrier be unaffected. Further, the operator shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; (2) the applicant was qualified to perform its proposed operations; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:
<http://dms.dot.gov/general/orders/aviation.html>.*